

No. 22023 /

United States
Circuit Court of Appeals
for the Ninth Circuit

RUDOLPH L. GROSS and CATHERINE D. GROSS,
Petitioners

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

Petition to Review a Decision of
The Tax Court of the United States

BRIEF OF PETITIONERS

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STATUTE

Sec. 166, Internal Revenue Code of 1954, Reg. 1, 165 (C) (1)	
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JURISDICTION

This appeal involves income taxes for the years 1958 and 1961. In 1961 Petitioners claimed a deduction for business bad debts in the amount of \$69,880.47 and carried the remaining business loss back to the year 1958. They thereafter received a carryback adjustment and refund of 1958 taxes. Respondent subsequently disallowed the business bad debt and based thereon determined deficiencies in income tax for

the years 1958, 1960, 1961. (Transcript of Record, Document No. 2, Exhibit A) There is no controversy here respecting the year 1960.

Pursuant to authority granted by Internal Revenue Code of 1954, Sec. 7442 (26 USC 7442), Petitioners timely petitioned the Tax Court of the United States for a redetermination. (Transcript of Record, Document No. 2) On 16 February, 1967, the Tax Court filed its Memorandum Findings of Fact and Opinion and based thereon entered its Decision for the Respondent. (Transcript of Record, Documents Nos. 11 and 12) Thereafter, on 18 May, 1967, Petitioners duly filed their Petition for Review by this Court. (Transcript of Record, Document No. 13) Jurisdiction is conferred on this Court by Internal Revenue Code of 1954 §7482 (26 USC 7482).

SPECIFICATIONS OF ERROR

The Opinion of the Tax Court (TCM 1967-31) is against the evidence and applicable statutory and case law as follows:

1. That the record falls far short of establishing Petitioners' loans were proximately related to any individual business they were carrying on. (TCM 1967-31, p. 8)
2. That Catherine D. Gross' advances to Union resulted in non-business losses since she was not engaged in any business in 1961. (TCM 1967-31, p. 9-10)

3. That the proof of the alleged loans and their relationship to an individual money lending business leaves much to be desired. (TCM 1967-31, p. 10)

4. That there are only three or four interest bearing notes . . . to witness the alleged money lending business. (TCM 1967-31, p. 10)

5. That the loans were certainly not made in a business-like manner; that there is a noticeable absence of the type of instruments and records usually found in the conduct of a man business. (TCM 1967-31, p. 11)

6. That advances to North Bend Veneer Company, Winley Steel Erectors, Baby Furniture, Inc. and The Hitchhiker Corporation appear to be advances to equity capital rather than loans, and even if loans, they appear to be advances to enhance or protect an existing investment. (TCM 1967-31 p. 11)

7. That Gross was not in a separate business of promoting and financing ventures for gain . . . that the most that could be said of all such loans is that they were designed to aid businesses in which he was an investor. (TCM 1967-31, p. 12)

8. That loans made to Union Finance Company and loans to Union's customers were not proximately related to petitioner's business of being an employee of Union Finance Company. (TCM 1967-31, p. 12 and 13)

9. The Opinion is further in error in its failure to make a decision respecting Petitioners' allegations and testimony based on his oral Amended Complaint, of unclaimed business bad debts the worthlessness of which were discovered to have occurred during 1961.

STATEMENT OF THE CASE

A. Year of Worthlessness.

Petitioner, Rudolph L. Gross, worked in the finance industry from 1936 to 1961 (with the exception of the war years) with his experience concentrated on consumer loans. (Tr. 14-16)

During the year 1950, Rudolph L. Gross, Catherine D. Gross and Burt Wilson, formed Union Finance Company, a Corporation, pursuant to the Oregon Small Loan Laws. The parties subscribed and paid for the capital stock of the said Corporation as follows:

Burt Wilson	\$30,000.
Rudolph L. Gross	15,000.
Catherine D. Gross	15,000.

and the said investment represented adequate capital. (Stipulation, Paragraph 9, pg. 3; Tr. 16) (Tr. 17)

From time to time, until 1958, the stockholders made loans to said Corporation. These loans had no relationship to shareholdings; were interest bearing; were evidenced by

notes and were treated as loans on the corporate books. (Stipulation, Par. 11, pg. 4) The notes were subordinated to a credit line extended to Union Finance Company by the United States National Bank. (Stipulation, Par. 11 and Par. 12, pgs. 3 and 4)

The Corporation, from time to time, borrowed money from non-stockholder strangers up to a total of approximately \$60,000. (Tr. 20; Tr. 126; Exhibit 19-S, pg. 7)

Funds were loaned by Petitioners to Union Finance Company for the dual purpose of earning interest income and of providing the Corporation additional borrowing capacity. (Tr. 21) Interest was, in fact, timely paid by the Corporation to Petitioners. (Tr. 22; Exhibits 1-A, 2-B, 6-F, -G)

Profits earned and losses incurred by Union Finance Company from 1958 through 1961 were:

Calendar year 1958	(\$ 69,954.36)	Loss
Calendar year 1959	1,104.23	Income
Calendar year 1960	(66,588.32)	Loss
As at June 30, 1961	(110,246.73)	Loss
Calendar year 1961	(155,910.23)	Loss

(Tr. 117-118)

Earned surplus (per books) in Union Finance Company, as at June 30, 1961, was (\$5,360.82), and as of December

31, 1961, was (\$51,024.32). Thus net stockholder equity as of December 31, 1961, was \$8,975.68. (Tr 116; Exhibit 19-S, pg. 9)

As of June 30, 1961, the Corporation owed the United States National Bank \$929,915.30, secured by notes, contracts and trust receipts due the Corporation from its customers, and also by the subordinated notes of Petitioner and Wilson. (Tr. 118, Stipulation, Par. 11 and 12, pgs. 3 and 4; Exhibit 19-S) Analysis of the true value of collateral pledged to the United States National Bank by the Corporation showed it did not adequately secure the bank obligation. (Tr. 119)

The Certified Public Accountants engaged by Union Finance Company were of the opinion that as of June 30, 1961, the Corporation was in "shaky" condition. (Tr. 117)

On or about May, 1961, Gordon Wilson, successor in interest of Burt Wilson, told Petitioner, Rudolph Gross that he wanted him to resign as Manager of the Union Finance Company. Gross refused, (Tr. 27-27) and on or about October 19, 1961, Gordon Wilson filed suit against Rudolph L. Gross and Union Finance Company, seeking receivership, accounting and injunction. Supporting said Complaint, Wilson, by Affidavit, swore, "The bank threatening to foreclose any security it holds. The financial condition of the Company is in grave doubt." (Stipulation of Facts, Par. 15, pg. 4; Exhibit 18-R) In connection with

the suit, a Receiver was appointed who thereafter excluded Gross from occupancy of the premises of Union Finance Company. (Stipulation of Facts, Par. 16, pg. 5; Tr. 27)

Based on his knowledge of the business losses and the filing of the lawsuit, Petitioner concluded prior to December 31, 1961, that he would not recover any of the amounts due him from the Corporation as evidenced either by stock or notes even though he filed claims therefor with the Receiver. (Tr. 28-29)

James Ross Nelson, of the Certified Public Accountants for Union Finance Company, and who prepared the 1961 individual income tax return for Petitioners, concluded that because of the loss history of the Corporation for several years, and because of disputes between the shareholders, and because of the inadequacy of the real value of collateral securing bank loans, the Union Finance Company was definitely under at not later than December 31, 1961", and that Petitioners, as creditors of the Company, had totally valueless notes as of that date. (Tr. 120-122)

Report of Receiver (filed March 7, 1962), which states the position of Union Finance Company as found by Receiver on the date he took over, indicates that of \$821,952.74 of receivables, \$324,886.09 were delinquent 90 days or over; that whereas the books indicated Dealer Reserves on hand provided collateral security of \$13,453.41, there was in fact

between June, 1960 and February, 1961, and aggregated \$3,402.40. Jack Finley was killed in the early spring of 1961, and the enterprise was abandoned. Petitioner made the loans fully expecting them to be repaid with interest or other financial gain. About one-half of these advances were repaid. (Tr. 37-41 incl.; Tr. 49; Tr. 132-133; Exhibit 43)

North Bend Veneer Co. was a corporation of which Petitioner and three others were equal stockholders. Each stockholder paid \$1,500.00 for his stock. North Bend was a customer of Union Finance, which made it equipment loans. From April, 1960 until June, 1961, Petitioner advanced working capital to North Bend. Twenty-eight such advances were made to an aggregate total of \$9,251.47. Petitioner intended these advances to be loans and they were so treated on the books of the Corporation. \$1,800.00 of the amounts advanced was recovered by Petitioner out of the sale of machinery which he acquired as security. Petitioner's records indicate that he borrowed money from the United States National Bank to provide working capital loans to North Bend. Petitioner assisted in the management of the company, but drew no salary from it. (Tr. 41-46; Exhibits 23, 45. Tr. 133-135)

Between 1958 and 1961, Petitioner made five separate loans aggregating \$875.00 to C. H. March. These loans were made to assist March in a dredging operation, and Petitioner

expected a profit on them. March, who also was a customer of Union, died in the spring of 1961. (Tr. 47-48; Exhibit 41)

Between January, 1960 and March, 1961, Petitioner made ten personal loans totalling \$475.00 to Jack Finley. This balance had been paid down to \$270.00 at the time of Finley's death in early 1961. (Tr. 48-49; Exhibit 42; Stipulation, Par. 4, 6, pg. 2)

Sam Osmundson was a used car man who worked for a dealer-customer of Union Finance. Osmundson wanted to go into business for himself, and Petitioner concluded that if he did he would be a customer for Union. Petitioner, therefore, loaned him \$535.00 for a lease deposit on a used car lot. The loan was represented by a check for \$35.00, and the balance by a demand note at 6% interest. Osmundson opened the car lot, but within 30 days, on or about October, 1961, disappeared, and, despite his efforts, has never been found by Petitioner. No part of the obligation was repaid, and no part thereof was deducted from income by Petitioner in 1961 or any subsequent year. (Tr. 50,51; Exhibit 36, 8-H, -I)

C. D. Kemp, dba Alpha Auto Sales, was a substantial customer of Union Finance Co. He had had a good credit experience with Union, but at the time of Petitioner's advances, it had started "getting weak". Petitioner loaned him \$3,400.00 on May 2, 1960, \$2,000.00 on March 24, 1961,

and \$3,500.00 on October 5, 1961. These loans were made, hoping to benefit the finance company, and with the agreement the funds would be returned with interest. Checks representing the advances were marked with the legend, "Loan" or "Car Advances". On October 4, 1961, Petitioner borrowed \$3,500.00 from the First National Bank and reloaned it to Alpha the next day. Alpha Auto Sales "went broke" in late 1961, owing Union Finance substantial balances, and owing Petitioner \$8,985.60. Despite efforts and demands by Petitioner, and subsequently by the Receiver for Union Finance Company, no recovery was or has been made by Petitioner or Union. The obligations to Petitioner were worthless at December 31, 1961. No part of them were deducted by Petitioner on his 1961 or any subsequent return. (Tr. 51-56; Tr. 58-59; Exhibit 38, 39, 20-T, 21-U, 2-B, 8-H, 9-I)

Toward the end of 1961, Union Finance Company was in serious difficulty and was becoming unable to pay its bills. Fred Marks convinced Petitioner he had Eastern money connections who would be willing to invest in or buy out Union. Petitioner advanced \$600.00 to Marks for expenses and loaned him an additional \$417.00 for the purpose of locating an investor or buyer. (Tr. 56-58; Exhibit 40)

Between February, 1960 and July, 1961, Petitioner made some twelve loans to Arthur W. Lehman, totalling \$1,295.00. These amounts are represented by checks bearing

the legend "Loan". Mr. Lehman was a customer of Union, and had been involved with Petitioner in North Bend Veneer Company. These advances were made for working capital for a logging venture Lehman was starting at North Bend, Washington. Lehman and Petitioner had an agreement the money would be repaid and that Petitioner, in addition, would receive an override on log sales as his profit on the advances. In the fall of 1961, Lehman defaulted on his repayments and Petitioner began making efforts to collect which are still unsuccessful. Petitioner has found a number of judgments and tax liens recorded against Lehman in King County, Washington, and determines the advances to have been worthless at the end of 1961. Petitioner did not deduct this loss in 1961 or any subsequent year. (Tr. 60-63, [N.B. Tr. 61, line 1, "a note to ride" should read "override"]; Exhibits 2-B; 8-H; 9-I, Exhibit 34.)

Between May, 1957 and May, 1961, Petitioner made eighteen separate loans to L. W. Taylor, aggregating \$6,595.00, of these \$2,500.00 advanced May 7, 1957, and \$1,650.00 advanced May 1, 1961 were represented by demand notes bearing interest. The remaining advances were represented by checks substantially all of which bear the legend "Loan". Prior to his death in the early spring of 1962, Mr. Taylor had repaid most of these amounts with

interest. At the time of his death, Taylor had a remaining obligation to Petitioner in an amount not less than \$1,000.00. Taylor was a co-stockholder with Petitioner in North Bend Veneer and was a customer of Union Finance. Taylor died leaving no estate. (Tr. 63-66; Exhibit 35)

P. T. LaLonde was a customer of Union Finance, between September, 1956 and March, 1961, Petitioner made seven separate loans to P. T. LaLonde and/or D. M. LaLonde (his wife), totalling \$4,742.00. Of this amount, \$2,720.50 was represented by a note dated September 7, 1956 bearing interest at 10%, and the balance by checks. All of the loans to LaLonde were repaid. (Tr. 66-68; Exhibit 32)

On January 29, 1959, and on September 28, 1962, Petitioner made secured, interest bearing loans to F. D. Windsor totalling \$5,200.00. Both amounts were repaid. (Tr. 68-69; Exhibit 33)

Prior to April 2, 1962, Petitioner had made several loans to one Michael P. O'Brien. On April 2, 1963, these loans were consolidated into an installment note of \$1,100.00. Attempts to collect on this note, as well as attempts made in 1961 to collect on the underlying obligations, were and are fruitless. Petitioner believes the obligation to have been worthless at the end of 1961. (Tr. 69-71; Exhibit 25)

Petitioner made additional loans as follows:

<u>Borrower</u>	<u>Date</u>	<u>Amount</u>	<u>Secured</u>	<u>Repaid</u>
H. Keller	7/ 6/60	\$ 55.00	no	no
G. & L. Smith	6/11/50	3,500.00	no	yes
M. Bergdorf	5/ 1/59	50.00	no	yes
F. Patterson	11/22/60	35.00	no	yes
C. & B. Clinton	4/16/59	500.00	yes	yes
A. Burke	1/31/56	1,688.40	yes	yes

(Tr. 71-75, Exhibit 26-31 incl.)

During the year 1961, a Corporation called Baby Furniture, Inc. was formed with G. Graef, C. D. Kemp and Sandra Dutoit, each subscribing to 1/3 of the authorized stock. The stock of Sandra Dutoit was in fact paid for and held by Petitioner, but was issued to Dutoit as a nominee. The stock was beneficially owned by Petitioner. In addition to his investment, Petitioner made working capital loans to the company during 1961 in a total amount of \$7,854.95. Of this total, Petitioner borrowed \$6,000.00 from Leonard Moore and reloaned it to the corporation. During the year 1962, Petitioner made additional loans to the corporation in a total amount of \$1,216.75. Loans made to the corporation by Petitioner were properly reflected on its books as such. Baby Furniture, Inc. went out of business in 1962. At the time it went out of business, Petitioner took all remaining inventory into his possession, but was and has been unable to

dispose of it. The value of the inventory acquired by Petitioner did not exceed \$1,500.00. No other payments were made to Petitioner. The loans became worthless in 1961 and 1962. Baby Furniture, Inc. properly elected treatment under Sub-Chapter S of the Internal Revenue Code, and for the calendar year 1961 suffered an operating loss of \$4,123.43. No put-through share of this loss was deducted either by Petitioner, nor by Sandra Dutoit. For the year 1962, Baby Furniture, Inc. suffered an operating loss in a minimum amount of \$3,231.52, no part of which was deducted by Petitioner or Sandra Dutoit. (Tr. 78-82; Tr. 127-131; Tr. 146; Tr. 148; Exhibit 24)

During 1960, Petitioner and P. T. LaLonde formed a corporation named "The Hitch-Hiker Co." It was capitalized for \$2,000.00. of which Petitioner paid cash for his 50% interest. Petitioner made additional loans to the company, properly identified on the corporate books as "Owing to Officer — R. L. Gross". Some of these loans were repaid from time to time. At the time the corporation was liquidated in 1961, it owed Petitioner \$487.62, no part of which was paid or collectible, and no part of which was or has been deducted by Petitioners.

In summary, during the period 1955 to 1962, Petitioner made 135 separate loans (exclusive of loans to Union Finance Company) to 22 borrowers in an aggregate amount

of not less than \$70,438.27. Twenty of the said borrowers were also customers of Union Finance Co.

SUMMARY OF THE ARGUMENT

Petitioner will argue:

A. Losses incurred by virtue of loans made to Union Finance Company were sustained during the year 1961.

B. Petitioners were in the trade or business of rendering services to a corporation for pay; of making loans; and of financing and promoting business opportunities.

ARGUMENT

A. Year of Worthlessness.

It must be assumed that Rudolph Gross was completely familiar with and aware of the financial position of Union Finance Company at all times. Not only was he the responsible managing officer, but stockholder dissidence impelled him to careful analysis of the company's condition during 1961. Thus, Mr. Gross was aware in the latter part of 1961, of those facts set forth by the Receiver early in 1962. He knew of the loss in portfolio value of the security behind consumer loans; the serious delinquency of a large percentage of loans outstanding; the concern of the United States National Bank as the company's provider of funds. Add to this the corroborative value of his testimony regard-

ing his personal loans made to Ros Morrison, Alpha Motor Sales and others, characterizing them as rescue loans made essentially for the protection of the finance company.

Who then, could realize better than he the worthlessness of the corporate notes which he, a stockholder, was holding. Who could know better that his position, because of subordination agreements, was junior to all obligations due the bank and that his position as managing shareholder of a corporation in receivership would doubtlessly be junior to third party strangers and certainly junior to Indian trust funds on time deposit with the finance company. Obviously, the claims filed by him with the Receiver were pro forma and forlorn and conceivably could have been made to maintain a state court record consistent with a presentation of his proper management of the company business.

Mere hope of future collection does not vitiate worthlessness.

Spreckels vs. Commissioner, 5 TCM 49 (Dec. 14, 1970 [M].)

B. Were Petitioners in a Trade or Business.

More germane to the problem herein is the classification of the loans made by Petitioner to Union Finance. As has been held in a line of cases typified by *John M. Trent, et ux, vs. Commissioner* (CCA2), 61-2 USTC 9506; 291 F 2 669; and *Leonard Lundgren and Evelyn Lundgren vs. Commis-*

itioner, 67-1 USTC 9389, 376 F 2 623, an employee of a corporation is in the business of rendering services for pay. Any loans made to the corporation in aid of this business activity, as distinguished from loans made to protect or enhance his position as an investor, are to be classified as business loans. As pointed out by this Court in *J. T. Dorniney*, 26 TC 940, a loan made by an individual related to his business, is a business loan whether or not the individual is also engaged in the business of lending money. The distinction between the business of rendering services to a corporation for gain and being a mere investor in a corporation is also implicit in the *Whipple* decision, ". . . when the only return is that of an investor the taxpayer has not satisfied his burden of demonstrating that he is engaged in a trade or business * * *". *A. J. Whipple*, 63-1 USTC 466.

Petitioner testified that at the time these loans were made, the company was completely solvent and profitable. The loans were not made to protect Petitioner's investment, or, as additions to working capital, did they directly enhance it. The true effect of the advances was to give the company, by virtue of triple bank loan leverage thus obtained, the ability to earn more profit. This maneuver was that of an experienced employee engaged in his business of rendering services for profit.

In addition to the foregoing rationale, we must note

that Petitioner was earning and being paid 10% on these advances. As will be seen hereafter, the volume of Petitioner's activity in the lending of money was sufficient to give him the business status of a money lender.

That a series of isolated transactions do not constitute a trade or business is axiomatic. That "investing" is not a trade or business where the only return is in dividend income or gain in the value of the security has been established by the Supreme Court in *A. J. Whipple*.

Obviously, there can be no set number of transactions nor no set dollar value on volume which can be said to draw the line of demarcation. The intention of the lender as indicated by his continuity must be determinative. In *Hyman R. Minkoff vs. Commissioner*, 15 TCM 1404, where Petitioner made 40 odd loans in five years totalling some \$300,000, this Court found him to be engaged in the business of lending money. In *Allerton Cushman, et ux, vs United States, D.C. Ariz.*, 56-2 USTC 9689, it was found that where Petitioner made 21 loans totalling \$288,000 including several unsecured advances aggregating \$65,500 to one borrower, she was in the business of lending money. In *F. R. Ingram vs. Commissioner*, 20 TCM 1447, Petitioner was found to have been involved in the promotion and financing of some 20 ventures. This Court held him to be in the business of promoting and lending money to businesses

In *Alfred S. V. Carpenter vs. A. G. Erickson*, USDC, Ore. Civil No. 64-478 (June 20, 1966) it was conceded that plaintiff had financed at least seven corporations and individuals from 1955 through 1962. In each instance plaintiff had guaranteed bank loans ranging from \$7,500 to \$133,000 and had received a fee of $\frac{1}{2}$ of 1% of the loan balance per annum. Plaintiff had great wealth, the bulk of it having come from investments in IBM and other "blue chip" stocks. Judge Gus Solomon held that although plaintiff was admittedly an investor, he also was in the business of financing businesses by loaning money and credit and that the subject losses were business bad debts.

In the instant case, the record shows that Petitioner's entire business experience involved and was connected with the money lending business; that from 1955 to 1961 he had adequate time to operate continuously as a money lender for his own account; that his intention always was to obtain profit from the advancement of funds, regardless of the formalities of the transaction. Indeed, the amount of time spent by Petitioner in the making and collecting of his personal loans, was bitterly complained of in the Bill in equity filed by his co-stockholder in the Receivership matter. The record further shows that Petitioner made over 140 loans to some 25 entities during the period 1955-1962, which aggregated in excess of \$130,000. The volume of loan transactions being made by Petitioner, when noted by his

certified public accountant, resulted in his thereafter filing a Schedule 1040 C for the business of making loans.

Testimony adduced at trial indicated that virtually all the larger loans made by Petitioner were made for the purpose of creating new customers for Union Finance; in assisting weak obligors of the Finance Company to attain a better operation so as to secure the repayment of their loans to the Finance Company; to further finance Union customers who had reached their credit limit with the company. As we have noted in *J. T. Dorminey*, a loan made by an individual proximately related to his principal business activity is a business loan. This doctrine is affirmed in *Paul L. Kentes, et ux, vs. Commissioner*, 21 TCM 274 in which case Petitioner, a chicken rancher, loaned \$103,000 to a restaurant which purchased 40% to 50% of his production; in *Ray A. Myers, et ux vs. Commissioner*, 42 TC 195 in which Petitioner guaranteed performance by their land development corporation of its contract. Failure of performance by the corporation required completion by Petitioner giving rise (held the Court) to a debtor-creditor relationship between the corporation and Petitioner. Subsequent failure of the corporation to pay gave rise to a business bad debt; and, in *Loren A. Decker, et ux, vs United States*, (DC Iowa), 65-2 USTC 9600, wherein Decker, a freight line operator, purchased \$10,000 of the capital stock of a glass boat manufacturer and loaned it additional \$49,000 through

undry advances. The Court, citing *Whipple* and *Weddle vs. Commissioner* (CCA-2), 325 F2 849, found that the plans were more proximately related to the development of a new hauling business than to the protection or enhancement of Petitioner's investment, and held, with *Weddle*, that it affords for deduction that the creation of the debt should have been significantly motivated by the taxpayer's trade or business even though there was a non-qualifying motive as well.

Petitioners further contend that they are within the doctrines established in *Minkoff*, supra, and in *Otis Newell Elliott and Tacy M. Elliott vs. U.S.A.* USDA Ore. Civ. No. 6-345 (April 6, 1967) i.e., that losses sustained in "the business of seeking out business opportunities for financing and promoting" are business bad debts. In this case testimony adduced established that Petitioners actively participated in the financing and promotion for anticipated profit of Finley Steel Erectors; North Bend Veneer Co.; Baby Furniture, Inc.; and The Hitch-Hiker Co. and other unincorporated ventures.

Testimony and exhibits presented at the trial of this case adequately prove that Petitioner suffered additional losses during 1961 from worthless bad debts, and from participation in a Sub-Chapter S corporation which were not deducted in the year 1961 or any subsequent year. The character and extent of these losses should have been

determined so as to allow Petitioners any tax benefit therefrom to which they were entitled.

CONCLUSION

The sense of the law, the regulations and judicial interpretations require that bad debt losses sustained by mere passive investors who look to capital growth and interest or dividend return without effort on their part be treated as capital losses, but that bad debt losses sustained by one devoting substantial, continuing effort to the management of a loan portfolio; to the seeking, financing and promoting of business opportunities; or by one making a loan in aid of and related to his business are to be treated as ordinary business losses. The evidence and testimony in this case evaluated in the light of the statutory and case law demand that the Memorandum Opinion of the Tax Court of the United States be set aside, that judgment be given for Petitioners that bad debt losses sustained and deducted by them were business bad debts, and that the matter be remanded for further determination as to additional deductible business bad debt and other losses incurred by Petitioners in 1961 and by them not deducted.

Respectfully submitted,

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Attorney for Petitioners

APPENDIX A

Referenced to Transcript

	<u>Exhibit Number</u>	<u>Exhibit Identified</u>	<u>Exhibit Received</u>	<u>Exhibit Rejected</u>
petitioner	1A-21U	1A-21U	1A-21U	
petitioner	22-44	22-44	22-44	
petitioner	45	45	45	
petitioner	46	46		46
petitioner	47	47	47	
petitioner	48	48		48
petitioner	49	49	49	
respondent	V	V	V	
respondent	W	W	W	

